

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(4)(e), (n)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing prior relationships, if any, between a broker or sales associate and the parties in a residential transaction.

Section 1. Definitions. (1) "Business relationship" means any arrangement whereby a licensee and a party have or had a mutual financial ongoing interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase or sale of real estate, but does not include the current real estate transaction.

(2) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.

(3) "Confidential information" means information that would materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party.

(4) "Contact" means discussion or correspondence between a licensee and an identified prospective party involving the licensee's services related to a mutually-contemplated real estate transaction.

(5) "Delivery" means delivery of an item to a party or prospective party by:

- (a) Mail;
- (b) Facsimile transmission;
- (c) Electronic mail;
- (d) Messenger; or
- (e) Hand.

(6) "Family relationship" means any known familial relationship between a licensee and party regardless of distance of the relationship.

(7) "Party" means one represented by a real estate licensee.

(8) "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

(9) "Prospective party" means a person who:

- (a) Has contact with a licensee; and
- (b) Has not entered into a brokerage agreement with a licensee relative to the contemplated transaction.

Section 2. The provisions of this administrative regulation shall not apply to a:

- (1) Sale of real estate at auction;
- (2) Property management of real estate; or
- (3) Commercial transaction.

Section 3. Prospective Party Information. (1) A licensee shall complete either the "Consumer Guide To Agency Relationships (For Companies That Allow Only Dual Agency {No Designated Agency} - Model Policy)" or the "Consumer Guide To Agency Relationships (For Companies That Allow Designated Agency & Dual Agency - Model Policy)", whichever is applicable, and deliver it

to the appropriate prospective party prior to:

(a) Receiving confidential information from a prospective party relative to a mutually-contemplated real estate transaction;

(b) Entering a representation agreement or submitting an offer to, or on behalf of, a prospective party; and

(c) The conclusion of the second contact between the licensee and a prospective party.

(2) The commission's Consumer Guide to Agency Relationships Model Policies and the Agency Disclosure Statements shall provide:

(a) Relationships available between the licensee and prospective party in Kentucky;

(b) The specific relationship proposed between the licensee and prospective party;

(c) The name of the licensee completing the form, the name of the principal broker of the licensee, and the name of the licensee's real estate company;

(d) The name of the prospective party; and

(e) The signature and date of signing by the prospective party.

(3)(a) The commission's "Consumer Guide to Agency Relationships" model policies may be revised by a broker to include the broker's company-specific information, including logos, and any other revisions which shall constitute a change or changes in the form of either or both model policies.

(b) Model policies that have been properly revised by a broker may be completed and delivered by the broker to a prospective party as substitutes for the commission-required model policies, to satisfy the requirements set out in Section 3 of this administrative regulation.

(c) A licensee shall solicit the signature of a consumer on the appropriate consumer guide as an acknowledgement by the consumer of his or her receipt of it and as evidence of the licensee's compliance with this provision.

(4)(a) An "Agency Disclosure Statement" that has been developed by the broker or sales associate shall be submitted to the commission for its prior approval.

(b) The general counsel of the commission shall:

1. Review the form;

2. Make a recommendation to the commission that the form be approved or disapproved; and

3. Inform the broker or sales associate of the commission's decision.

(5) The agency disclosure statements shall be given to the consumer and signed at the time a buyer is making an offer and at the time a seller is reviewing that offer.

(a) A licensee shall complete Section I of the Agency Disclosure Statement if the real estate transaction involves agents from two (2) different companies. In such transactions, the licensee shall provide on the appropriate lines the licensee's name and the name of the real estate brokerage company along with the name of the principal broker for that company. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer or seller, whichever applies, for that person's signed consent, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

(b) A licensee shall complete Section II of the Agency Disclosure Statement if the real estate transaction involves two (2) agents in the same real estate brokerage company. In such transactions, the licensee shall designate whether the transaction involves designated agency or dual agency by checking the appropriate box.

1. If the real estate transaction involves designated agency, the licensee shall complete Section II, providing on the appropriate line the name of the agent representing the buyer and the name of the agent representing the seller. The licensee shall also provide on the appropriate line the name of the real estate brokerage company whose principal broker and manager or managers shall be the dual agents in the designated-agency transaction. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be

provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

2. If the real estate transaction involves dual agency, the licensee shall complete Section II, providing on the appropriate line the name of both agents involved in the transaction. If an agent has any business, family, or personal relationship with the other party, then the agent shall explain the nature of the relationship or relationships in the space provided for that information. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

(c) If the real estate transaction involves only one (1) agent, the licensee shall complete Section III, providing on the appropriate lines the licensee's name and the name of the real estate brokerage company involved in the transaction.

1. If the agent will be representing both the buyer and the seller in the transaction, the licensee shall acknowledge that by marking the first box in Section III, which states that the agent will be a dual agent. If the agent has any business, family, or personal relationship with either the buyer or seller in the transaction, then the agent shall explain the nature of the relationship or relationships in the space provided at the end of the information presented for the first box in Section III. The licensee shall then present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

2. If the agent will be representing only one (1) of the parties or none of the parties in the real estate transaction, then the licensee shall acknowledge that by marking the second box in Section III and only one (1) of the boxes that follow it, identifying which party, if any, the agent will be representing in the transaction. The second box in Section III shall be checked if a real estate transaction involves a "for sale by owner" seller, an unrepresented buyer, or a transaction brokerage situation. The licensee shall present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures, which shall be provided in the "Consent" section, appearing at the bottom of the Agency Disclosure Statement.

Section 4. Incorporation By Reference. (1) The following material is incorporated by reference:

(a) "Consumer Guide To Agency Relationships (For Companies That Allow Only Dual Agency - Model Policy)", March 2006;

(b) "Consumer Guide To Agency Relationships (For Companies That Allow Designated Agency & Dual Agency - Model Policy)", March 2006;

(c) "Agency Disclosure Statement - Buyer", March 2006; and

(d) "Agency Disclosure Statement - Seller", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. (21 Ky.R. 3089; Am. 22 Ky.R. 717; 852; 10-13-95; 2045; 23 Ky.R. 122; eff. 7-5-96; 23 Ky.R. 3605; 4175; 330; eff. 7-11-97; 25 Ky.R. 1683; 2365; eff. 4-14-99; 27 Ky.R. 1524; 2498; 2719; eff. 4-9-2001; 31 Ky.R. 1339; 1653; eff. 4-22-05; 32 Ky.R. 2318; 33 Ky.R. 454; 724; eff. 10-6-06.)